

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ZAKRY DAVIS, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SCOTT A. DAVIS,

Respondent-Appellant,

and

SUSAN M. DAVIS,

Respondent.

In the Matter of ZAKRY DAVIS, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SUSAN M. DAVIS,

Respondent-Appellant,

and

SCOTT A. DAVIS,

Respondent.

Before: Murray, P.J., and Gage and Kelly, JJ.

UNPUBLISHED
November 25, 2003

No. 247445
Kent Circuit Court
Family Division
LC No. 95-039003-NA

No. 247477
Kent Circuit Court
Family Division
LC No. 95-039003-NA

MEMORANDUM.

Respondents appeal as of right from the trial court's order terminating their parental rights to the minor child under MCL 712A.19b(3)(b)(i), (b)(ii), (c)(i), (g), and (i). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent-father argues that the trial court erred in terminating his parental rights at the initial dispositional hearing. We disagree. MCL 712A.19b(4) provides that "if a petition to terminate the parental rights to a child is filed, the court may enter an order terminating parental rights under subsection (3) at the initial dispositional hearing." MCR 5.974(D), now MCR 3.977(E), details the procedure for terminating parental rights at the initial dispositional hearing. The record demonstrates that the proper procedure was followed in these proceedings. Petitioner requested termination of respondent-father's parental rights in the original and amended petitions. At the preliminary hearing, the trial court found by a preponderance of evidence that Zakry came under the jurisdiction of the court on the basis of MCL 712A.2(b). Respondent-father later admitted that his parental rights to two older children, Jamie and Shauna, had been terminated in 1997 because he failed to make sufficient progress on his treatment plan. Respondent-father also admitted that he had been convicted of second-degree child abuse and served a prison sentence as a result of injuries Jamie sustained at respondent-father's hand. Thus, respondent-father's admissions established by legally admissible evidence that his parental rights to Zakry's siblings had been terminated because of physical abuse, and that prior attempts at rehabilitation were unsuccessful. MCL 712A.19b(3)(i). Accordingly, the trial court did not err in terminating respondent-father's parental rights at the initial dispositional hearing. Further, the evidence did not show that termination of respondent-father's parental rights was clearly contrary to Zakry's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Respondent-mother argues that the trial court erred when it terminated respondent-mother's parental rights because the only evidence presented to support termination was a single incident that happened seven years earlier when respondent-father panicked when his daughter, Jamie, was choking. We disagree. Respondent-mother admitted that her parental rights to Jamie and Shauna had been terminated because of injuries Jamie sustained at respondent-father's hand. The record indicates Jamie suffered brain damage as a result of shaken baby syndrome. Thus, respondent mother's parental rights to Jamie and Shauna were terminated pursuant to MCL 712A.19b(3)(b)(ii), (c)(i), and (g). Respondent-mother admitted that she had not cooperated with the treatment plan in that prior case and had refused to admit to any responsibility as far as abuse to Jamie was concerned. Respondent-mother also admitted that, upon Zakry's birth, she did not provide information about the prior termination of parental rights. Considering this evidence, the trial court did not clearly err in finding that a sibling of Zakry's had suffered physical injury or physical abuse, respondent-mother had the opportunity to prevent the physical injury and physical abuse but failed to do so, prior attempts to rehabilitate respondent-mother had been unsuccessful, and there was a reasonable likelihood that Zakry would suffer injury or abuse in the foreseeable future if placed in respondent-mother's home. Therefore, the court did not clearly err in terminating respondent-mother's parental rights to Zakry pursuant to MCL 712A.19b(3)(b)(ii) and (i). MCR 5.974(I), now MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, the evidence did not show that termination of respondent-

mother's parental rights was clearly contrary to Zakry's best interests. MCL 712A.19b(5); *In re Trejo Minors, supra* at 356-357.

Affirmed.

/s/ Christopher M. Murray

/s/ Hilda R. Gage

/s/ Kirsten Frank Kelly